IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : R.S.A.No.4334 of 2005

Date of Decision : September 21, 2006.

Brij Lal Sharma ..... Appellant

Vs.

Chief Engineer, Electricity Operation,
Chandigarh Administration & another ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

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Present : Mr.Vijay Lath, Advocate
for the appellant.

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P.S.Patwalia, J. (Oral) :

The present Regular Second Appeal has been filed by the plaintiff against the judgment of the lower appellate court vide which his claim for grant of pay scale of the post of Foreman was declined.

A reading of the facts of this case would show that the plaintiff was promoted as Foreman vide letter dated 5.2.1993 by his employer which was the Punjab State Electricity Board, Patiala. His services were placed at the disposal of Chief Engineer, D.S.South, P.S.E.B., Patiala for appropriate posting. At that time plaintiff was serving on deputation at Chandigarh. He approached his employer the P.S.E.B., Patiala for being retained at

Chandigarh and accordingly the order was modified and his services were placed at the disposal of Chief Engineer, Electricity Operations, Chandigarh.

Since there was no post of Foreman available at Chandigarh, as a matter of fact the plaintiff never actually joined on the promoted post of Foreman but kept on working as Lineman at Chandigarh and retired on attaining the age of superannuation as Lineman on 31.5.1996. It is only after his retirement that he filed the present suit raising various pleas regarding non payment of his terminal benefits and also claimed the benefit of the order dated 5.2.1993 promoting him as Foreman. He also raised a plea that he was entitled to the pay scale of Foreman with effect from 5.2.1993 onwards and appropriate revision in his pension as well. The lower appellate court found that as a matter of fact the plaintiff was never interested in joining on the promoted post in Punjab but rather wanted to continue to remain on deputation at Chandigarh. In Chandigarh, there was no available post of Foreman. It is therefore that he kept on working as Lineman up to his retirement. In these circumstances since the plaintiff had never joined on the promoted post he was held not to be entitled for the pay scale granted for the post of Foreman. The findings recorded by the lower appellate court to this effect are as hereunder :-

> *"From the evidence led on the file especially statement of PW Brij Lal Sharma and evidence in defence in the shape of DWs Bachan Singh, Hari Singh and Bijay Singh, it is apparent that even if the plaintiff was promoted by PSEB, Patiala as a Foreman he was never ever posted as*

a Foreman by defendant no.2 and till he retired, Brij Lal Sharma worked as Lineman only. The stance of U.T. Administration is that they had not asked for Foreman to be sent to it on deputation as there was no vacancy and therefore the only option with the plaintiff was to either abandon his promotion and continue working as Lineman with Chandigarh Administration or to seek his repatriation to the parent Board. The plaintiff chose first option for numerous reasons which are too obvious. He did not want to leave Chandigarh where he has stayed for nearly 33 years. Had he been repatriated and promoted as Foreman he most probably would have been asked to serve in any nook or corner of the State of Punjab. It goes without saying that the plaintiff did not relish the idea of leaving comforts offered by City of Chandigarh and keep quite despite his promotion. In these circumstances the appellant-defendant no.2 could have not been asked by the Ld. Trial Court to pay Brij Lal Sharma the salary and allowances payable to a Foreman. Neither Chandigarh Administration had asked for a Foreman nor Brij Lal was accepted as a Foreman by U.T. Administration. He served as Lineman till his retirement and has been paid whatever was

lawfully payable to a Lineman."

I find no error in the view taken by the lower appellate court. It is apparent that the plaintiff was interested in remaining at Chandigarh. It is therefore that he never joined the promoted post. He worked as Lineman and has been retired as Lineman. He has been paid whatever was lawfully payable to a Lineman on his retirement.

I therefore find no merit in this Regular Second Appeal and the same is accordingly dismissed in limine.

September 21, 2006 (P.S.Patwalia)
monika Judge